

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1230/P2

JK:jld:jf

RMR

DOA:.....Lillethun, BB0302 - Expand tribal tax refund and sharing agreements

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1-22-09

don't gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, DOR may enter into agreements with American Indian tribes or bands located in this state to refund, generally, the cigarette and tobacco product taxes imposed on sales of cigarettes and tobacco products sold on land that was designated a reservation or trust land on or before January 1, 1983. Under this bill, DOR may provide tax refunds for cigarettes and tobacco products sold on land designated a reservation or trust land on or before January 1, 1983, or on a later date determined by an agreement between DOR and the tribal council.

This bill also allows DOR to enter into agreements with American Indian tribes or bands located in this state to collect, remit, and provide refunds of income, withholding, sales and use, motor vehicle fuel, and beverage taxes related to activities occurring on tribal lands or undertaken by tribal members outside of tribal lands.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 73.03 (64) of the statutes is created to read:

2 **73.03 (64)** (a) To enter into agreements with federally recognized American
3 Indian tribes or bands in this state to collect, remit, and provide refunds of the
4 following taxes for activities that occur on tribal lands or are undertaken by tribal
5 members outside of tribal lands:

6 1. Income taxes imposed under subch. I of ch. 71.

7 2. Withholding taxes imposed under subch. X of ch. 71.

8 3. Sales and use taxes under subch. III of ch. 77.

9 4. Motor vehicle fuel taxes imposed under subch. I of ch. 78.

10 5. Beverage taxes imposed under subch. I of ch. 139.

11 (b) For purposes of this subsection, all tax and financial information disclosed
12 during negotiations, or exchanged pursuant to a final agreement, between the
13 department and a federally recognized American Indian tribe or band in this state
14 is subject to the confidentiality provisions under ss. 71.78 and 77.61 (5).

15 (c) The department shall prepare a fiscal analysis of each agreement negotiated
16 under this subsection and shall submit that analysis to the joint committee on
17 finance for its review no later than 30 days after the agreement is signed by the
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23 tax paid to the tribe or band shall be applied as a credit against and deducted from
24 the tax, to the extent thereof, imposed by this section. In this subsection "sales tax"

INSERT
3-2

- 1 includes a use or excise tax imposed on the use of tangible personal property or
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3 **SECTION 3.** 139.323 (3) of the statutes is amended to read:

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11

(END)

INSERT
3-10

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1230/P3ins
JK:jld:jf

Insert 3 - 2

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2 77.54 (9a) (ed) Any federally recognized American Indian tribe or band in this
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Insert 3 - 10

- 4 **SECTION 9443. Effective dates; Revenue.**
5 (1) SALES TAX EXEMPTION FOR AMERICAN INDIAN TRIBES OR BANDS. The treatment
6 of section 77.54 (9a) (ed) of the statutes takes effect on the first day of the 2nd month
7 beginning after publication.

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]**Sent:** Friday, January 23, 2009 3:56 PM**To:** Kreye, Joseph**Subject:** FW: 1230-P2 Review

Joe - FYI, see below. This makes the issue a little more clear. Go ahead and add the credit back in as mentioned earlier. Thanks.

-Chad

From: Lillethun, Chad W - DOA**Sent:** Friday, January 23, 2009 3:54 PM**To:** Ourada, Thomas D - DOR; Templeton, Carrie E - DOR**Cc:** Hardt, Diane L - DOR; Grinde, Kirsten - DOA; Crane, Lili B - DOR; Hinnendael, Michael J - DOR**Subject:** RE: 1230-P2 Review

Now I understand. We'll have your recommendation added, and thanks for clarifying.

-Chad

From: Ourada, Thomas D - DOR**Sent:** Friday, January 23, 2009 3:46 PM**To:** Lillethun, Chad W - DOA; Templeton, Carrie E - DOR**Cc:** Hardt, Diane L - DOR; Grinde, Kirsten - DOA; Crane, Lili B - DOR; Hinnendael, Michael J - DOR**Subject:** RE: 1230-P2 Review

Chad, In relation to your second paragraph in the e-mail below, the department's intent is not to provide a sales and use tax exemption for any purchases by tribal members, rather the intent is to exempt purchases by the tribe and tribal employees off tribal lands. Such a limited exemption (limited to purchases by the tribe, not tribal members) is accomplished by the proposed creation of sec. 77.54(9a) (ed), Wis. Stats. The tribal member making purchases off tribal lands would continue to owe Wisconsin sales tax.

In relation to your third paragraph, we're not just talking about a credit for tribal members, but a credit for anyone paying tribal sales tax and then taking the property off the reservation and using the property in Wisconsin, triggering a Wisconsin use tax obligation. Without the creation of s. 77.53 (16m) the person would have paid a tribal sales tax and would still have a Wisconsin use tax obligation. We're trying to eliminate the requirement that a person pays both a Tribal sales tax and the State use tax.

I hope this helps explain the Department's intent.

Tom Ourada
(608) 266-8875

From: Lillethun, Chad W - DOA**Sent:** Friday, January 23, 2009 3:12 PM**To:** Templeton, Carrie E - DOR**Cc:** Hardt, Diane L - DOR; Ourada, Thomas D - DOR; Grinde, Kirsten - DOA**Subject:** RE: 1230-P2 Review

Hi Carrie. I may have misunderstood the purpose of the credit Tom proposed as part of his review.

01/23/2009

The intent of my instruction to LRB was to provide sales tax treatment to tribal employees, who are making official business purchases on behalf of the tribe, as we do with state and local government employees. In other words, we are not providing a general sales tax exemption for your average tribal member making general purchases off of tribal lands, but rather just in this noted circumstance.

If the concern is that the language is insufficient as written because it requires a tribal member to pay use tax on purchases out of state where sales tax was already paid, then we should correct this to ensure that tribal members are not subject to use tax in such circumstances.

Does this clarify?

-Chad

"Carrie, DOA needs to understand there can be double taxation (the state use tax is still owed) if we do not get this credit for taxes paid to the tribe. A business would not want to make any major purchase from a tribal business or they could get caught in an audit with us."

From: Templeton, Carrie E - DOR
Sent: Friday, January 23, 2009 1:55 PM
To: Lillethun, Chad W - DOA
Subject: FW: 1230-P2 Review
Importance: High

Hi Chad
 I'm confused...can you help? What do you think? Thanks
 Carrie

Carrie Templeton
Wisconsin Department of Revenue
 (608) 266-6466
carrie.templeton@revenue.wi.gov

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From: Hardt, Diane L - DOR
Sent: Friday, January 23, 2009 12:32 PM
To: Ourada, Thomas D - DOR; Templeton, Carrie E - DOR; Erlandsen, Dana J - DOR; Crane, Lili B - DOR
Cc: Hinnendael, Michael J - DOR
Subject: RE: 1230-P2 Review

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Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Friday, January 23, 2009 3:43 PM
To: Kreye, Joseph
Subject: RE: 1230-P2 Review

Yes, I guess we do want the credit. Sorry for the confusion, thanks.

-Chad

From: Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]
Sent: Friday, January 23, 2009 3:37 PM
To: Lillethun, Chad W - DOA
Subject: RE: 1230-P2 Review

Chad,

I think what Diane Hardt from DOR is saying is that the provision I removed from the previous draft, s. 77.53 (16m), would have allowed a business purchasing something from the tribe to claim the amount of any tribal tax that the business paid on that purchase from the amount of the state use tax that the person owes on the same purchase. Without the credit, the business pays more tax on the purchase, but with the credit the state collects somewhat less state sales and use taxes.

So...do you want the credit?

Let me know,

Joe

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

From: Lillethun, Chad W - DOA [mailto:Chad.Lillethun@wisconsin.gov]
Sent: Friday, January 23, 2009 3:22 PM
To: Kreye, Joseph
Subject: FW: 1230-P2 Review

Joe - FYI on the below. I wanted to put this on your radar in case I misunderstood the purpose of the credit that was requested as part of DOR's instructions to you.

-Chad

From: Lillethun, Chad W - DOA
Sent: Friday, January 23, 2009 3:12 PM
To: Templeton, Carrie E - DOR
Cc: Hardt, Diane L - DOR; Ourada, Thomas D - DOR; Grinde, Kirsten - DOA
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01/23/2009

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From: Ourada, Thomas D - DOR

01/23/2009

Sent: Friday, January 23, 2009 11:49 AM

To: Templeton, Carrie E - DOR; Erlandsen, Dana J - DOR; Hardt, Diane L - DOR; Crane, Lili B - DOR

Cc: Hinnendael, Michael J - DOR

Subject: RE: 1230-P2 Review

Attached is a proposed Draft Review of LRB-1230/P3. Mike Hinnendael reviewed the draft and it creates Sec. 77.54 (9a) (ed), a sales tax exemption for Tribes comparable to the local govt. sales tax exemption in 77.54 (9a) (b) and (e). (Which is what DOR was initially proposing.)

The draft has a couple other problems, a shorter effective date, and a failure to include the s. 77.53 (16m) credit against state sales tax for tribal taxes. This Draft Review notes these two problems, but does not request any further change regarding the tribal sales tax exemption. Can you advise what DOA wants with regard to that point? Thank you.

From: Ourada, Thomas D - DOR

Sent: Thursday, January 22, 2009 10:43 AM

To: Crane, Lili B - DOR; Erlandsen, Dana J - DOR

Cc: Hardt, Diane L - DOR

Subject: FW: 1230-P2 Review

FYI: DOA is revising our proposed change to the tribal tax sharing draft, see the attached instructions from DOA to the LRB. I'm not sure how Joe Kreye will draft this, but the direction from DOA seems to be saying they want an exemption only for tribal employees on tribal business, not something comparable to the local govt. exemption in s. 77. 54 (9a) (b) and (e).

From: Lillethun, Chad W - DOA

Sent: Thursday, January 22, 2009 10:23 AM

To: Kreye, Joseph - LEGIS

Cc: Grinde, Kirsten - DOA; Templeton, Carrie E - DOR; Ourada, Thomas D - DOR; Raes, Julie M - DOR; Gates-Hendrix, Sherrie L - DOR

Subject: FW: 1230-P2 Review

Joe - Attached is the DOR review for expansion of revenue sharing with Native American tribes, though I need to note a change to reviewer's instructions. This item has been approved with the exception of providing a general sales tax refund to tribal members when making tribal purchases while off tribal lands. We will, however, extend a sales tax refund to tribal employees who make purchases on official tribal business, similar to the current sales tax treatment for purchases made by government employees for work purposes.

Therefore, the second part of the reviewers comments (below) is applicable, while the first should be disregarded. Thanks.

The draft should clearly authorize a sale and use tax exemption so that a federally recognized American Indian tribe or band in Wisconsin would be exempt from payment of sales and use taxes for purchases made in Wisconsin outside Tribal lands. This exemption would include purchases made by tribal employees if they are making such purchases on behalf of the tribe or band, e.g., sales of meals and lodging to the tribe or band for its tribal employees traveling on tribal business would be exempt from the sales and use tax.

From: Raes, Julie M - DOR

Sent: Tuesday, January 20, 2009 7:36 PM

To: Lillethun, Chad W - DOA

Cc: Gates-Hendrix, Sherrie L - DOR

Subject: 1230-P2 Review

01/23/2009

Chad,

There are recommended changes meant to clarify credit and exemption provisions.

Thank you, Julie

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Friday, January 23, 2009 4:23 PM
To: Kreye, Joseph
Subject: FW: 1230-P2 Review

Joe - FYI on the language.

From: Ourada, Thomas D - DOR
Sent: Friday, January 23, 2009 4:07 PM
To: Lillethun, Chad W - DOA; Templeton, Carrie E - DOR
Cc: Hardt, Diane L - DOR; Crane, Lili B - DOR
Subject: RE: 1230-P2 Review

My apologies Chad, the actual language should read as amended below.

77.53(16m) If the purchase, rental, or lease of tangible personal property or service subject to the tax imposed by this section occurred on tribal lands and was subject to a sales tax by a federally recognized American Indian tribe or band in this state, the amount of sales tax paid to the tribe or band shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section .

Thank you.

Tom Ourada

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To: Lillethun, Chad W - DOA; Templeton, Carrie E - DOR
Cc: Hardt, Diane L - DOR; Ourada, Thomas D - DOR
Subject: FW: 1230-P2 Review

Here's the exact language needed:

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Chad, In relation to your second paragraph in the e-mail below, the department's intent is not to provide a sales and use tax exemption for any purchases by tribal members, rather the intent is to exempt purchases by the tribe and tribal

01/24/2009

employees off tribal lands. Such a limited exemption (limited to purchases by the tribe, not tribal members) is accomplished by the proposed creation of sec. 77.54(9a) (ed), Wis. Stats. The tribal member making purchases off tribal lands would continue to owe Wisconsin sales tax.

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01/24/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1230/P3

JK:jld:rs

RMK:bjk

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FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA✓
X-ref✓

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in 1-23-09

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IN/ERT
2-18

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(1) SALES TAX EXEMPTION FOR AMERICAN INDIAN TRIBES OR BANDS. The treatment of section 77.54 (9a) (ed) of the statutes takes effect on the first day of the 2nd month beginning after publication.

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11 (END)

end of hunt 2-18

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Wednesday, January 28, 2009 2:42 PM
To: Kreye, Joseph
Subject: FW: 1230/P4 Draft Review - Tribal Revenue Sharing

Joe, It looks like we have one minor change on the tribal revenue sharing proposal and then we should be done with that one. We have approval to change the draft so as to NOT require JCF review of the DOR fiscal analysis, but rather provide that DOR report to the JCF the terms of the agreements once signed.

-Chad

"The draft also requires that fiscal analyses of any agreements be reviewed by the Joint Committee on Finance."

From: Grinde, Kirsten - DOA
Sent: Wednesday, January 28, 2009 1:59 PM
To: Lillethun, Chad W - DOA
Subject: FW: 1230/P4 Draft Review - Tribal Revenue Sharing

Chad,

Please see Dave's thoughts on DOR submitting a report to JCF rather than having JCF review the proposed agreement.

Thanks,

Kirsten

From: Schmiedicke, David P - DOA
Sent: Wednesday, January 28, 2009 12:30 PM
To: Grinde, Kirsten - DOA; Kraus, Jennifer - DOA
Subject: RE: 1230/P4 Draft Review - Tribal Revenue Sharing

That's fine with me.

From: Grinde, Kirsten - DOA
Sent: Wednesday, January 28, 2009 11:58 AM
To: Schmiedicke, David P - DOA; Kraus, Jennifer - DOA
Subject: FW: 1230/P4 Draft Review - Tribal Revenue Sharing

I would think that we are fine with DOR's report rather than review approach with JCF on the tribal revenue sharing agreements, but let me know if you agree or have concerns.

Thanks,

Kirsten

From: Lillethun, Chad W - DOA
Sent: Wednesday, January 28, 2009 11:07 AM
To: Grinde, Kirsten - DOA
Subject: FW: 1230/P4 Draft Review - Tribal Revenue Sharing

Hey - Just a follow-up on this one. The draft is complete but for this outstanding question below. Any thoughts?

-Chad

01/28/2009

From: Lillethun, Chad W - DOA
Sent: Monday, January 26, 2009 4:27 PM
To: Grinde, Kirsten - DOA
Subject: FW: 1230/P4 Draft Review - Tribal Revenue Sharing

Kirsten - I spoke with Carrie about changing the draft so as to NOT require JCF review of the DOR fiscal analysis, but rather provide that DOR report to the JFC the terms of the agreements once signed. Let me know if you're ok with moving forward with this requested change. Thanks

-Chad

"The draft also requires that fiscal analyses of any agreements be reviewed by the Joint Committee on Finance."

From: Templeton, Carrie E - DOR
Sent: Monday, January 26, 2009 4:17 PM
To: Lillethun, Chad W - DOA; Grinde, Kirsten - DOA
Cc: Wink, Wendy L - DOR
Subject: FW: 1230/P4 Draft Review

No further changes except for the one we just discussed requiring DOR to report to JFC the terms of the agreements when signed. Thanks
 Carrie

Carrie Templeton
Wisconsin Department of Revenue
(608) 266-6466
carrie.templeton@revenue.wi.gov

****Important Confidentiality Notice****

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From: Raes, Julie M - DOR
Sent: Monday, January 26, 2009 4:05 PM
To: Templeton, Carrie E - DOR; Wink, Wendy L - DOR
Cc: Gates-Hendrix, Sherrie L - DOR
Subject: FW: 1230/P4 Draft Review

For your review

From: Ourada, Thomas D - DOR
Sent: Monday, January 26, 2009 3:59 PM
To: Gates-Hendrix, Sherrie L - DOR; Raes, Julie M - DOR
Cc: Crane, Lili B - DOR
Subject: 1230/P4 Draft Review

Sherrie and Julie, attached is a Draft Review of the Revised Tribal tax sharing proposal, M.4. We are not seeking any further changes to the draft. I just rewrote the description of the proposal to more completely describe the provisions of the revised draft. Thank you.

<< File: 1230-P4 Draft Review.doc >>



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1230/P4

JK:jld&bjk:ph

PS
stays RM mtr

DOA:.....Lillethun, BB0302 - Expand tribal tax refund and sharing agreements

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-28-09

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, DOR may enter into agreements with American Indian tribes or bands located in this state to refund, generally, the cigarette and tobacco product taxes imposed on sales of cigarettes and tobacco products sold on land that was designated a reservation or trust land on or before January 1, 1983. Under this bill, DOR may provide tax refunds for cigarettes and tobacco products sold on land designated a reservation or trust land on or before January 1, 1983, or on a later date determined by an agreement between DOR and the tribal council.

This bill also allows DOR to enter into agreements with American Indian tribes or bands located in this state to collect, remit, and provide refunds of income, withholding, sales and use, motor vehicle fuel, and beverage taxes related to activities occurring on tribal lands or undertaken by tribal members outside of tribal lands.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 73.03 (64) of the statutes is created to read:

2 73.03 (64) (a) To enter into agreements with federally recognized American
3 Indian tribes or bands in this state to collect, remit, and provide refunds of the
4 following taxes for activities that occur on tribal lands or are undertaken by tribal
5 members outside of tribal lands:

- 6 1. Income taxes imposed under subch. I of ch. 71.
- 7 2. Withholding taxes imposed under subch. X of ch. 71.
- 8 3. Sales and use taxes under subch. III of ch. 77.
- 9 4. Motor vehicle fuel taxes imposed under subch. I of ch. 78.
- 10 5. Beverage taxes imposed under subch. I of ch. 139.

11 (b) For purposes of this subsection, all tax and financial information disclosed
12 during negotiations, or exchanged pursuant to a final agreement, between the
13 department and a federally recognized American Indian tribe or band in this state
14 is subject to the confidentiality provisions under ss. 71.78 and 77.61 (5).

15 (c) The department shall prepare a fiscal analysis of each agreement negotiated
16 under this subsection and shall submit that analysis to the joint committee on
17 finance for its review no later than 30 days after the agreement is signed by the
18 department and the tribe or band.

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19 **SECTION 2.** 77.53 (16m) of the statutes is created to read:

20 77.53 (16m) If the purchase, rental, or lease of tangible personal property or
21 service subject to the tax imposed by this section occurred on tribal lands and was
22 subject to a sales tax by a federally recognized American Indian tribe or band in this
23 state, the amount of sales tax paid to the tribe or band shall be applied as a credit
24 against and deducted from the tax, to the extent thereof, imposed by this section. In

1 this subsection "sales tax" includes a use or excise tax imposed on the use of tangible
2 personal property or taxable service by the tribe or band.

3 **SECTION 3.** 77.54 (9a) (ed) of the statutes is created to read:

4 77.54 (9a) (ed) Any federally recognized American Indian tribe or band in this
5 state.

6 **SECTION 4.** 139.323 (3) of the statutes is amended to read:

7 139.323 (3) The land on which the sale occurred was designated a reservation
8 or trust land on or before January 1, 1983, or on a later date as determined by an
9 agreement between the department and the tribal council.

10 **SECTION 5.** 139.803 (3) of the statutes is amended to read:

11 139.803 (3) The land on which the sale occurred was designated a reservation
12 or trust land on or before January 1, 1983, or on a later date as determined by an
13 agreement between the department and the tribal council.

14 **SECTION 9443. Effective dates; Revenue.**

15 (1) SALES TAX EXEMPTION FOR AMERICAN INDIAN TRIBES OR BANDS. The treatment
16 of section 77.54 (9a) (ed) of the statutes takes effect on the first day of the 2nd month
17 beginning after publication.

18 (END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1230/P5

JK:jld&bjk:md

+WJ RMR

DOA:.....Lillethun, BB0302 - Expand tribal tax refund and sharing agreements

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-30-09
D-N

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

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(65) 8

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- 6 (IN 2011)
2-5
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17 this subsection to the joint committee on finance no later than 30 days after the
18 agreement is signed by the department and the tribe or band.

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(1) **SALES TAX EXEMPTION FOR AMERICAN INDIAN TRIBES OR BANDS.** The treatment of section 77.54 (9a) (ed) of the statutes takes effect on the first day of the 2nd month beginning after publication.

(END)

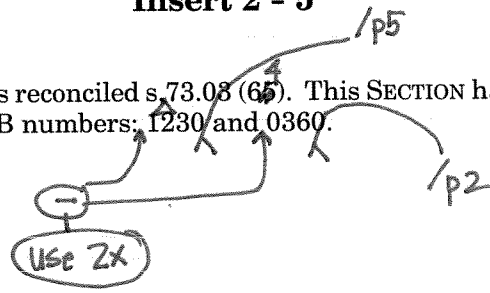
**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1230/P6ins
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***NOTE: This is reconciled s. 73.03 (65). This SECTION has been affected by drafts with the following LRB numbers: 1230 and 0360.



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1230/P6dn

JK:jld&bjk:md

Wij

Date

✓ ✓ Both
This draft reconciles LRB-1230/P5 and LRB-0360/P2. ~~All~~ of these drafts should
continue to appear in the compiled bill.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1230/P6dn
JK:wlj:md

January 30, 2009

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Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1230/P6
JK:jld/bjk/wlj:md

DOA:.....Lillethun, BB0302 - Expand tribal tax refund and sharing agreements

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